



**Montgomery**  
218 Commerce Street  
P.O. Box 4160  
Montgomery, AL 36103-4160

**Atlanta**  
4200 Northside Parkway  
Building One, Suite 100  
Atlanta, GA 30327

(800) 898-2034  
BeasleyAllen.com



**P. Leigh O'Dell**  
leigh.odell@beasleyallen.com

**Michelle A. Parfitt**  
mparfitt@ashcraftlaw.com

May 3, 2024

Honorable Rukhsanah L. Singh, U.S.M.J  
United States District Court  
Clarkson S. Fisher Building & US Courthouse  
402 East State Street  
Trenton, NJ 08608

***Re: Johnson & Johnson Talcum Powder Products, Marketing, Sales  
Practices and Products Liability Litigation***  
**Case No.: 3:16-md-02738-MAS-RLS**

Dear Judge Singh:

Pursuant to the Court's request for bi-monthly reports, the parties jointly offer the following update on recent activities in the MDL:

**Expert Depositions:**

- The depositions of Plaintiffs' experts Drs. Mc Tiernan, Clarke-Pearson, Rigler, Cote, Moorman, Smith-Bindman, Siemiatycki, Sage, Godleski, Kessler, Singh, Harlow and Wolf have been conducted.
- The following Plaintiffs' experts are scheduled to be deposed in accordance with the following schedule: Dr. Longo (May 2<sup>nd</sup>-3<sup>rd</sup>), Dr. Newman (May 15<sup>th</sup>) and Dr. Levy (May 8<sup>th</sup>).
- The Defense expert reports are due to be served on May 21, 2024. The Parties continue to meet and confer on dates for the depositions of the defense experts which are being taken in coordination with the MCL in New Jersey state court. Defendants await a response to the dates offered for depositions of Drs. Diette, Boyd, Permuth, Osann and Sanchez.

- Plaintiffs have responded to Defendants request for production of certain notes, invoices, and other documents from Drs McTiernan, Clarke-Pearson and Siemiatycki that were requested at the time of their depositions. Plaintiffs have agreed to produce further documents from Dr. Siemiatycki, and the parties continue to meet and confer regarding additional documents requested from Drs. McTiernan and Clarke-Pearson.
- On April 18, 2024, Defendants requested another deposition of Plaintiffs' expert Dr. Saed on the basis that Plaintiffs' other experts rely on multiple publications by Dr. Saed since his last deposition. On April 29, 2024, Plaintiffs produced additional documents responsive to defense requests for production directed to Dr. Saed in 2021.

### **Defendants' Request for Production of Documents by Plaintiffs' Expert Dr. Longo and Request for Inspection**

- The plaintiffs submit that this issue is premature. There has been no meet and confer or discussion except for recent disparate written communications. For these reasons, the parties present their independent presentations of the issue.

#### **Defendants:**

On April 18 the Defendants served an amended notice of deposition for Dr. William Longo that included both a request for preservation and production of certain core documents and materials relevant to his testing of Johnson's Baby Powder, as well as a request to inspect Dr. Longo's laboratory and methodology for analyzing talc. During the evening of May 1, Plaintiffs objected to the requests across the board. Defendants will seek leave to compel both the requested documents and inspection as the materials and methodology at issue are central to the arguments to be raised in Defendants' forthcoming motion to exclude Dr. Longo's testimony pursuant to FRE 702 and Daubert. Defendants further assert that Dr. Longo's repeated testimony in talc matters and his intended expert opinions in this matter belie Plaintiffs protestations that the issues identified in the requests, including the request for inspection, can be

obtained through other means, or are in any way irrelevant or burdensome. Defendants will brief these issues in connection with their application for relief.

**Plaintiffs:**

In response to Defendant's First Notice of Deposition, Plaintiffs' Steering Committee filed its objection to the Notice and responsive answers. On April 18, 2024, defendants propounded an updated Notice of Deposition expanding their requests to preservations of materials and a request to inspect Dr. Longo's Laboratory. The Plaintiffs have filed their objections to the updated request and provided objections to some of the requests either because they had been provided to Defendants, previously responded to or were objectionable. Specifically, the Plaintiffs object to Defendants' request for inspection of Dr. Longo's Laboratory on the grounds that it seeks to inspect places or things not relevant to the litigation and because the request is not proportional to the needs of the case. Further, inspections such as those demanded by Defendants are disfavored where, as here, the same evidence may be obtained through less obtrusive means of discovery. Specifically, Dr. Longo has produced documents and provided instructions specific enough for Defendants' experts to replicate his testing if they should choose. Further, Defendants have provided no authority that would require Dr. Longo to redo the testing in his report. Moreover, Dr. Longo's laboratory is replete with confidential, trade secret, and privileged materials, much of which is proprietary and/or the subject of ongoing litigation. Defendants' notice is unprecedented in scope, and the inspection proposed would be unduly burdensome in that it would interrupt business operations and unnecessarily impose upon Dr. Longo's employees.

**Plaintiffs' Subpoena to Public Library of Science (PLOS):**

- On March 20, 2024, the PSC served the Public Library of Science (PLOS) with a subpoena for information related to a manuscript submitted by Plaintiffs' expert Dr. Saed to PLOS in 2020.

- On April 12, 2024, Counsel for PLOS served an objection to the subpoena claiming privileged and confidentiality attaching to the objection a Privilege Log on counsel for the Plaintiffs.

#### **Case Management Order CMO No. 9:**

- The parties have conferred and exchanged drafts of a proposed order to address the notices of inability to substitute. It is the parties' intention to file an agreed upon order this week.

#### **Bellwether Discovery Responses:**

- On April 1, 2024, Plaintiffs served responses to Defendants' Request for Admissions, Production Requests, and Interrogatories on the six Bellwether plaintiffs. The parties continue to meet and confer on the adequacy of the responses.

#### **Notice of Subpoena on Paul Hess:**

- Defendants filed an Amended Notice of Intent to Serve Subpoena on April 23, 2024 (ECF 32037). The subpoena is for a videotaped deposition of Paul Hess, a non-party and employee of Plaintiffs' expert, Dr. William Longo. Plaintiffs are reviewing the pleading and will respond accordingly.

#### **Plaintiff Profile Forms:**

- On May 1, 2024, Defendants filed an Order to Show Cause in regard to any matters listed on the March 1, 2024, PPF Report (2016-2017 cases) which remain noncompliant. With regard to PPF Reports, the parties agree that if a Plaintiff contends that Defendants have mistakenly placed a Plaintiff's case on the deficiency list, counsel for the Plaintiff will reach out directly to defense counsel to advise of that error with Defendants to correct the list as needed. The parties agree that Plaintiffs should confirm the accuracy of the MDL Centrality information and close the MDL Centrality account for a particular plaintiff when a case is dismissed. The PPF Report will be updated as corrections are received.

**Status of New Jersey Proceedings before Judge Porto;**

- On April 5, 2024, Defendants, in the Carl and Balderrama matters, identified 14 expert witnesses and, pursuant to the parties' agreement, provided 9 reports. The remaining 4 expert reports were served on April 12, 2024, as agreed.
- Depositions for Plaintiffs' case specific experts in the Carl and Balderrama matters were completed for Dr. Godleski (April 19<sup>th</sup>) (Carl and Balderrama) and Dr. Wolf, (April 25<sup>th</sup>) (Carl only). Dr. Cramer's deposition is scheduled for May 2<sup>nd</sup> (Balderrama only).
- Defendants' case specific experts for Carl and Balderrama are scheduled to be deposed as follows: Dr. Finan (May 10<sup>th</sup>) (Carl), Dr. Nagarsheth (May 15<sup>th</sup>) (Balderrama) and Dr. Felix (June 6<sup>th</sup>) (Carl and Balderrama).
- The Parties continue to meet and confer regarding the remaining expert witnesses and mutually convenient dates for depositions.
- The completion of the Plenary hearing regarding the disqualification of Beasley Allen will take place on May 3, 2024.

Hon. Rukhsanah L. Singh, U.S.M.

May 3, 2024

Page 6

---

Thank you for your consideration of these matters,

Respectfully submitted,

/s/ P. Leigh O'Dell

P. Leigh O'Dell

/s/ Michelle A. Parfitt

Michelle A. Parfitt

Plaintiffs' Co-Lead Counsel

cc: Susan Sharko, Esq. (via email)  
All Counsel (via ECF)